The ground of decision was, however, slightly different. "The books," said the court, "are shipped in New York by the plaintiff to the plaintiff in North Carolina. There is no commerce about it. When the plaintiff gets his goods here, if he wishes to peddle them he must do like other people who have goods and wish to peddle them. He must submit to the laws of the state and obtain a license."

The present case repudiates all these grounds of validity as contradictory to the doctrines of the Supreme Court, and in a lengthy opinion the court reviews the entire law upon the subject. The decision is based upon the fact that the goods are shipped into the state in unbroken packages, and in this form delivered to the purchaser. The court says: "When we once concede, as we must, that the power of Congress to regulate commerce among the several states does not stop at the boundary of a state, but must enter its interior and operate there, and that, being 'coextensive with the subject on which it acts' its full force is not spent until there is a sale of the article which is imported, and not then if there is any discriminaton against the goods because of their foreign character, the conclusion we have reached seems to be inevitable. . . . The mere calling the plaintiff a peddler does not make it a peddler, for the purpose of laying a tax upon its business as an importer which interferes with interstate commerce, and is in its essence a regulation of the same."

In the neighboring state of Georgia a similar statute came to the attention of its supreme court in *Wrought Iron Range Co. v. Johnson*, 84 Ga. 754, and the court held that the agent who solicited such orders only, and who did not afterwards deliver them, could not be made subject to such a tax on peddlers. But in a later decision, *Racine Iron Co. v. McCommons*, 111 Ga. 538, this case is limited to that state of facts alone, and held not to include the receiving or distributing agent who afterward receives them, nor the goods themselves when so received. The decision assumes that there is no reason why such goods should not be deemed part of the mass of the property in the state as soon as they are received by the agent, regardless of the fact that there is some purchaser willing to take them from him in the performance of a purely executory contract. Cases which coincide with this view of the Georgia court are *Newcastle v. Cutler*, 15 Pa. Super. Ct. 612, and *In re Wilson*, 19 D. C. 341.

RAILROADS: LIABILITY OF LESSOR FOR INJURIES TO LESSEE'S SERVANT ARISING THROUGH NEGLIGENCE OF LESSEE.

The Supreme Court of Illinois, in a recent decision (*Ry. Co. v. Hart*, 70 N. E. 654), announced a general rule making a lessor railroad company liable to an employee of a lessee railroad company for a tort arising solely through the lessee's negligence. It is difficult to see how such a conclusion could have

been reached in the absence of a statutory enactment making lessor companies liable in such cases unless expressly absolved from liability. The reasoning of the learned court, in handing down the decision, is not so convincing as that in the dissenting opinion. Proceeding upon the assumption that the employee of a railroad company stands in the same relation to the railroad company as does the general public, it attempts to fix the lessor's liability partly upon the old maxims, "Qui facit per alium facit per se "and "Respondeat superior"; and partly upon principles of public policy.

It is conceded that the lessor company would be liable for a tort committed by the lessee company upon a stranger, and also for a tort committed upon an employee of a lessee under circumstances where the responsibility might rest fairly upon the lessor, as for example, where the tortious injury was the result of a defect in the road-bed. But neither of these points is involved in the Illinois case. The only question in that case is as to the liability of the lessor to an employee of the lessee for an injury arising solely through the lessee's negligence.

It must be borne in mind that each state has its own regulations with regard to the liability in such cases. Notwithstanding this, there is remarkable unanimity of opinion amongst the authorities, as seen in the adjudicated cases, to the effect that liability for torts upon servants of lessee companies, arising solely from the negligence of the lessee, attaches to the lessee and not to the lessor. This has been held not only in states where legislative authority to lease has been given, *Swice v. Mand B. S. R. Co.*, Ct. of App., Ky., June 30, 1903; *V. M. R. Co. v. Washington*, 86 Va. 629; *Banks v. Ga. R. & B Co.*, 112 Ga. 655; *Lee v. S. P. R. R. Co.*, 116 Calif. 97, but also in one state at least where such authority was not given, *B. & O. and C. R. Co. v. Paul*, 140 Ind. 23. The only case which can be found directly upon the point and holding to the contrary is *Logan v. N. C. R R. Co.*, 116 N. C. 940. This case was referred to in the decision of the Illinois Court, but it must be remembered that in North Carolina there is a positive legislative enactment providing that liability shall attach to the lessor company in cases of injuries to the employees of a lessee company, unless the lessor company is expressly absolved from liability. The law as held in the majority of the cases cited may be found in 2 *Ell. R. R.*, 610; 1 *Wood Rys.*, 25; *Patt. Ry. Acc. Law*, §§ 130–131. In 23 *Am. and Eng. Enc. of Law* 785, after setting forth the rule in Illinois with respect to the liability of the lessor company to the general public, it is said: "The rule of liability which has just been stated does not apply to the lessee's servants who may be injured through the lessee's regligence."

An employee of a railroad company and a stranger do not stand in the same relation to the railroad company. The distinction between the two is drawn clearly in *B. and O. & C. R. Co. v. Paul*, 143 Ind. 23. The lessor by accepting its charter assumes the obligation of carrying passengers safely on its line.

If it intrusts that duty to another company, and a passenger is injured, it is liable. It assumes also to operate its road with such degree of skill and care that the lives of those who have the right to pass on or near its tracks will not be jeopardized. Should the lessee inflict injuries upon wayfarers who cross its road, the lessor is liable. But the duty which a railroad company owes to its servant does not arise from the fact that the servant is one of the general public, but from the contract of service. If, therefore, the servant of a lessee is injured he must look to the lessee for redress and not to the lessor, who can be held liable in such a case upon no principle of justice.

When recovery has been allowed against the lessor upon grounds of public policy, it has been under circumstances wholly different from those in the Illinois case. As indicated in the dissenting opinion, it has been because public policy demands that so far as the general public is concerned, a corporation should be held responsible for the proper exercise of the powers granted; or, because the corporation would be enabled to place the operation of its road in the hands of irresponsible parties, were their liability denied; or, because an injured party might be seriously hindered in obtaining his redress through ignorance as to what corporation to sue. The dissenting opinion shows clearly that none of these reasons apply to the servant of a lessee company. The servant needs no protection as one of the general public because he can enter the service or not as he chooses. He is not required to enter the service of an irresponsible company. If he is injured he certainly knows which company to sue.

It is noteworthy that three justices concur in the dissenting opinion, one of marked learning and ability, and apparently much more in line with the trend of decision on the subject of the liability of lessor railroad companies than that of the majority.

QUO WARRANTO: THE EXTENT OF THE JURISDICTION OF AN APPELLATE COURT TO ISSUE AN INJUNCTION.

In a recent opinion, in the case of *State ex. rel. Ellis, Atty. General v. Board of Deputy State Supervisors of Cuyahoga County*, handed down by the Supreme Court of Ohio, a very interesting question arose, which may be stated as follows: Can a Court having appellate jurisdiction only, except for *quo warranto*, *mandamus*, prohibition, and *habeas corpus*, for which it has original jurisdiction, while hearing *quo warranto* proceedings, issue an injunction against one of the parties to the proceeding? The facts as found in the Ohio case were these: On April 23, 1904, a new law went into effect changing the method of appointing judges of election. The effect of the law was to abolish the old board and establish a new one. The old board questioned the constitutionality of the new law and refused to give up the office. Proceedings in *quo warranto* were instituted to try the